



*The Commonwealth of Massachusetts*  
*Executive Office of Environmental Affairs*  
*100 Cambridge Street, Suite 900*  
*Boston, MA 02114*

Deval L. Patrick  
GOVERNOR

Timothy P. Murray  
LIEUTENANT GOVERNOR

Ian A. Bowles  
SECRETARY

Tel: (617) 626-  
1000  
Fax: (617) 626-  
1181  
[http://www.mass.gov  
v/envir](http://www.mass.gov/envir)

March 22, 2007

FINAL RECORD OF DECISION

PROJECT NAME : Borgatti Property  
PROJECT MUNICIPALITY : Northborough  
PROJECT WATERSHED : Assabet  
EOEA NUMBER : 12348/13708  
PROJECT PROPONENT : Assabet River Consortium/ Brendon Property  
Two, LLC  
DATE NOTICED IN MONITOR : March 7, 2007

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby **grant** a Phase I Waiver to allow an initial phase of the project to proceed based on the conclusion of the MEPA review process for the project.

Assabet River Consortium – NPC/Phase I Waiver Request

The Town of Northborough together with the Towns of Hudson, Maynard, Shrewsbury, and Westborough, and the City of Marlborough have joined to form the Assabet River Consortium to prepare a Comprehensive Wastewater Management Plan/Environmental Impact Report (CWMP/EIR, EOEA# 12348) to address short term- and long-term regional issues relating to the wastewater treatment and disposal and nutrient loading in the Assabet River on a basin-wide basis. The goals of the CWMP/EIR are to identify environmentally sustainable treatment alternatives that respond to the communities' needs, meet water quality and public health standards, reduce phosphorous loading, and increase water levels in the Assabet River and its tributaries.

The Certificate on the ENF for the Consortium required that prior to completion of MEPA review for the Consortium CWMP, projects located within the Consortium communities that seek sewer extension permits from the DEP will also require a Phase I waiver from the EIR requirement for the Consortium. The project proponent has requested such a waiver in a Notice of Project Change (NPC) filed jointly with the ENF for the Borgatti Property (EOEA #13708) and published in the Environmental Monitor on February 22, 2006.

Development projects located within the Consortium communities requesting municipal sewer service must satisfactorily demonstrate: 1) that the proposed project is located in an area proposed for municipal sewer; 2) an on-site solution is not feasible; and 3) the proponent has committed to contribute to ongoing infiltration and inflow removal (I/I) projects within the Town of Shrewsbury and will provide mitigation (on at least a 2: 1 basis) for every gallon of wastewater generated by the proposed project and exported out of the basin, before being allowed to connect to the sewer system.

### Borgatti Property

As described in the Environmental Notification Form (ENF) and updated in the EIR filings, the proposed project entails construction of 575,000 square feet (sf) of retail/restaurant space and a 350-unit apartment complex on a 157-acre site in Northborough, MA. The project includes construction of two 2,200-foot access drives from Route 20 and 3,410 parking spaces (2,710 for retail and 700 for residential). Utilities, including water and sewer, will be located within the layout of the access driveway. Water and sewer will be extended off-site to connect with existing municipal services. Sewer service will be provided via a connection to the Northborough municipal sewer system for treatment and discharge at the Marlborough Westerly Wastewater Treatment Facility (WWTF).

As described in the NPC and the EIR submittals, the project change consists of the construction of an on-site pump station, 4,900 feet of 6-inch sewer force main within Tomblin Hill Road and Thayer Street and the installation of 4,700 feet of 8-inch gravity sewer within Davis Street terminating at the existing sewer in Davis Avenue. The project will generate 151,810 gpd of wastewater. The proponent has analyzed the feasibility of an on-site wastewater disposal option and provided a detailed description of the water use and wastewater generation characteristics associated with the proposed project.

### Phase I Waiver Request

Pursuant to Section 11.11 of the MEPA Regulations, the proponent is requesting a Phase I Waiver to construct the sewer extension. Section 11.11 of the MEPA regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: (a) result in an undue hardship for the proponent, unless based on delay in compliance by the proponent; and (b) not serve to avoid or minimize Damage to the Environment.

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1. An additional 290 spaces will be banked for future use if warranted by demand (and subject to local approval).

In the case of a partial waiver of a mandatory EIR review threshold that will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
3. the project is severable, such that phase one does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and,
4. the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.

#### Findings

I have carefully reviewed the Phase I Waiver Request, supporting documentation and written comments. Based on this review, I find that:

1. The proponent has provided adequate analysis of an on-site wastewater system and demonstrated infeasibility to the degree required by MassDEP.
2. MassDEP has indicated that sufficient capacity is available to handle the project's wastewater generation at the Marlborough Westerly WWTF.
3. The proponent will take adequate measures to avoid, minimize and mitigate the impacts of the project including: funding of a comprehensive town-wide I/I study in the amount of \$200,000 and verified removal of 140,000 gpd of I/I from the wastewater system.
4. In addition, the proponent will minimize water use by implementing the following water conservation measures: flow restrictors for plumbing fixtures (including aerators for faucets, low-flow toilets and low-flow showerheads), rain shut-off devices and use of drought tolerant and native species.
5. The Sewer Connection/Extension Permit from MassDEP will incorporate the proposed mitigation measures and contain terms and conditions to ensure due compliance with MEPA and 301 CMR 11.00.

Based on these findings, it is my judgment that the Phase I waiver request has merit, meets the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I hereby grant the Phase I Waiver subject to the aforementioned findings and conditions.

March 22, 2007

Date

A handwritten signature in black ink, appearing to read 'IAB', is centered above a horizontal line.

Ian A. Bowles

No comments received

IAB/CDB/cdb